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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,133	09/26/2003	Stephen A. Ewald	EWAL-0002	6111

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WOODCOCK WASHBURN LLP  
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PHILADELPHIA, PA 19104-2891

EXAMINER
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FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

NOTIFICATION DATE	DELIVERY MODE
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09/08/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eofficemonitor@woodcock.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,133	EWALD, STEPHEN A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MARK FADOK	3625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-3, 7-16 and 20-22 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-3, 7-16 and 20-22 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/24/2011 has been entered.

Acknowledgement is made to the amendment to claims 1,9,12 and the cancelation of claims 4-6 and 17-19. Applicant's amendment and remarks have been carefully considered and were found to be persuasive, however after further search and consideration the following new ground of rejection is presented below.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1,9,12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner is unable to determine which conditional recitation is being accomplished in the claim, because the recited "conditional limitations do not move to distinguish the claimed invention from the cited art. These phrases are conditional limitations with the noted step not necessarily performed (e.g. sending collected data to the server selectively receiving the data and

verifying purchase data when requested goods or services are not available for purchase, utilize sent data when explicit data is not present). Accordingly, once the positively recited steps are satisfied, the method as a whole is satisfied -- regardless of whether or not other steps are conditionally invocable under certain other hypothetical scenarios. [See: *In re Johnston*, 77 USPQ2d 1788 (CA FC 2006); *Intel Corp. v. Int'l Trade Comm'n*, 20 USPQ2d 1161 (Fed. Cir. 1991); MPEP §2106 II C].

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3,7-16 and 20-22 rejected under 35 U.S.C. 102(e) as being anticipated by Noreen et al (US PG PUB 200200422854).**

**In regards to claim 1**, Noreen discloses a system for purchasing goods and services linked with broadcast media (Abstract), comprising:

one or more broadcast radio receivers configured to receive in-band broadcast radio media (Fig 11, item 300) and

determine, based on the media, information relating to goods and services that can be purchased by persons receiving the media (FIG 20),

each receiver further configured to collect data from monitored channels, selectively receive a purchase request, record the purchase data for goods and services relating to the broadcast media (FIG 15 item 416),

Noreen teaches determining whether explicit identification data is present in the broadcast radio media (para 0014), and

generate an indication when the requested goods or services are not available for purchase (para 0071),

wherein the receivers are further configured to effectuate determination of the information relating to goods and services when the broadcast radio media does not include explicit identification data by sending the collected data to a server (para 0014) and

one or more servers configured to selectively receive and verify purchase data sent from the one or more receivers(FIG 12-16) wherein:

when the purchase data includes explicit identification data upon verification at the one or more servers, the purchase is accomplishable without further interaction from the person (para 0046), and

the one or more servers are further configured to use the sent collected data to identify the requested goods or services when the media does not include explicit identification data identifying the goods and services, whereupon the purchase is effectuated without further interaction from the person (para 0046).

**In regards to claim 2**, Noreen teaches wherein each broadcast radio receiver is in communication with a server (FIG 12-16).

**In regards to claim 7**, Noreen teaches wherein each broadcast radio receiver is a single device (FIG 13, item 320).

**In regards to claim 8**, Noreen teaches wherein each broadcast radio receiver is comprised of at least two devices, to include a broadcast media receiver and a purchase selection device (Para 64, 69,77, item 390).

**In regards to claim 9**, Noreen discloses a broadcast radio receiver for purchasing goods and services linked with broadcast media, the broadcast radio receiver configured to receive in-band broadcast media and determine, based on the media, information relating to goods and services that can be purchased by persons receiving the media, the broadcast radio receiver further configured to collect data from monitored channels, selectively receive a purchase request record the purchase data for goods and services linked with the broadcast media,

determine whether identification data is present in the broadcast radio media,  
generate an indication when the requested goods or services are not available for  
purchase, effectuate the determination of the purchase data relating to the goods and

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services when the broadcast radio media does not include explicit identification

information by sending the collected data to a server, and

selectively transmit the purchase data or collected data to another computer device (see response to claim 8), wherein when the purchase data containing includes explicit identification information, upon verification, the purchase is accomplishable without further interaction from the person; and wherein the broadcast radio receiver is configured to receive a direct download of said purchased goods and services upon verification of the purchase (see response to claim 1).

**In regards to claim 10**, Noreen teaches a purchase selection indicator (Fig 11, item 328).

**In regards to claim 12**, Noreen discloses a method for facilitating the purchasing purchase of goods and services linked with broadcast media, comprising:

receiving at a broadcast radio receiver in-band broadcast media;

receiving at the broadcast radio receiver a purchase request;

collecting data from monitored channels;

determining whether explicit identification data is present in the broadcast media and generating an indication when the requested goods or services are not available for purchase;

effectuating the determination of the information relating to the requested goods and services when the broadcast media does not explicit identification information by sending the collected data to at least one server;

selectively recording purchase data at the broadcast radio receiver for a good or service associated with the purchase request;

sending, by the broadcast radio receiver, the purchase data or the collected data to the at least one server;

receiving the purchase data or collected data at the at least one server;  
determining the information relating to the requested goods and services based on the collected data when the purchase data is not received; and  
verifying the purchase data;

if no purchase data is present, determining information relating to the requested goods and services from the received collected data at the least one server,  
wherein the purchase is accomplishable without further interaction from the receiver  
(see response to claim 1).

**In regards to claim 13,** Noreen teaches wherein:

the step of sending the purchase data is sending the purchase data to a plurality of servers (; and

further comprising the step of storing the purchase data of one of the servers;  
and wherein the step of verifying the purchase data occurs at a different server (FIG 19).



**In regards to claim 20**, Noreen teaches wherein the at least two devices are separate (see response to claim 8).

**In regards to claim 21**, Noreen teaches wherein the purchased goods and services are at least one song (FIG 6).

**In regards to claim 22**, Noreen teaches wherein upon verification of the purchase, at least one song being directly downloaded to the broadcast radio receiver (para 0055).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3, 11 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Noreen et al in view of Moskowitz et al.**

**In regards to claims 3,11, and 15**, Christensen teaches recording information for later purchase (col 6, lines 64-67), but does not specifically mention that the information is transmitted at a specific location. Moskowitz teaches storing purchase data and then transmitting the data at a gasoline dispensing device at a specific location (FIG 7). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Christensen transmitting purchase information at a specific location, because this will allow the vehicle download information when the vehicle is outside a broadcast area therefore assure that a transaction might be completed without missing a sale.

**Claim 14 and 16 are rejected is under 35 U.S.C. 103(a) as being unpatentable over Noreen et al in view of Official Notice.**

**In regards to claim 14**, Noreen teaches sending information to multiple servers but does not specifically mention wherein the step of sending the purchase data is sending the purchase data from the broadcast radio receiver to the server via a secure communication channel. The examiner takes Official Notice sending information over the internet via a secure means such as https was old and well known in the art at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Noreen wherein the step of sending the purchase

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data is sending the purchase data from the broadcast radio receiver to the server via a secure communication channel, because this will assure that sensitive information about the consumer is protected and the consumer will feel more at ease using the system.

**In regards to claim 16**, the examiner takes official notice that transferring collected data at a specific time such as in a batch method was old and well known in the art at the time of the invention. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Noreen storing the purchase data at the broadcast radio receiver; and transmitting the stored data from the broadcast radio receiver to the server at a predetermined period of time, because the information can be sent in a batch format at a time when bandwidth usage is low thus reducing the chances that the data transfer will be timed out or otherwise delayed.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 7-16 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

Alexandria, Va. 22313-1450

or faxed to:

**571-273-8300**

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

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/Mark Fadok/

Mark Fadok

Primary Examiner, Art Unit 3625